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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,940	11/04/2003	Charles E. Heger	549242002200	7139
25226	7590	01/26/2006	EXAMINER	
MORRISON & FOERSTER LLP 755 PAGE MILL RD PALO ALTO, CA 94304-1018			GUADALUPE, YARITZA	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/701,940	Applicant(s) HEGER ET AL.	
	Examiner Yaritza Guadalupe McCall	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-12,15-17,27-29,32-38,40-47,50,52-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9,15-17,27-29,32-38,40-47 and 52 is/are allowed.
- 6) ☒ Claim(s) 1-3,10,11,50 and 53 is/are rejected.
- 7) ☒ Claim(s) 4-6 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

In response to Amendment filed November 15, 2005

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 – 3, 10, 11, 50 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dong (US 5,864,956) in view of Seki (US 6,430,823) and further in view of Claxton (US 5,394,616).

In regards to claim 1, Dong discloses an apparatus having one or more light emitting modules detachable from each other, wherein each of the modules has at least two sides (See Figures 2 and 3, could be interpreted as a top and side, a top and bottom side, etc..) that allows for substantially parallel positioning on the reference surface (surface on which is placed) and allows substantially parallel positioning against a side of another light emitting modules, and

wherein each of the light emitting modules cooperates with the reference surface to provide oriented light.

Dong does not disclose the leveling platform and the modules being magnetically detachable as stated in claims 1, 10, 11 and 50. Dong does not disclose the self-leveling platform or manually-leveling platform as stated in claims 2 - 3.

With respect to the leveling platform of claims 1 - 3: Seki discloses a device comprising a leveling platform (4) providing a reference surface (i.e., serving as an adjustable support for the laser modules) made substantially leveled, and one or more light emitting modules (9, 28) detachable from the leveling platform and having at least two sides for parallel positioning on the reference surface. Seki discloses said leveling platform being manually leveled in order to achieve maximum horizontal and vertical leveling adjustment against the installation surface (See Column 5, lines 1 – 11). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a leveling platform as taught by Seki to the apparatus disclosed by Dong in order to achieve maximum horizontal and vertical leveling adjustment against the installation surface (See Column 5, lines 1 – 11).

In regards to the magnetically detachable modules of claim 1 : Claxton discloses a laser positioning device being magnetically detachable by means of a magnetic material (63) being provided on one side in order to provide sufficient holding power to strongly attract and hold the device in place (See Column 4, lines 10 – 16). Therefore, it would have been obvious to a

person having ordinary skill in the art at the time the invention was made to modify the light emitting modules disclosed by Dong by adding magnetic means to the housing as taught by Claxton in order to provide sufficient holding power to strongly attract and hold the device in place when stacked during the leveling process and prevent undesired movement that may affect the accuracy of the leveling.

In regards to claim 2 : Dong, Seki and Claxton disclose an apparatus as stated above, having a manually adjustable and leveled platform. The use of the particular type of leveling support as claimed by applicant, i.e., self-leveling, absent any criticality, is considered to be nothing more than a choice of engineering skill, choice or design because 1) neither non-obvious nor unexpected results, i.e., results which are different in kind and not in degree from the results of the prior art, will be obtained as long as the support is accurately leveled during use, as already suggested by Seki, 2) the leveling support claimed by Applicant and the leveling support used by Seki are well known alternate types of leveling supports which will perform the same function, if one is replaced with the other, of accurately leveling the support during use, and 3) the use of the particular type of leveling support by Applicant is considered to be nothing more than the use of one of numerous and well known alternate types of leveling supports that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to accurately level the support during use as already suggested by Seki.

With respect to claim 10, Dong and Seki disclose a housing having a plurality of sides (Figure 3 shows 3 modules stacked up, each module having a top, a bottom, and peripherals sides, all of these sides defining the plurality of sides), an aperture defined in a first side of the sides (defined by the wall allowing the laser beam to be emitted), a light source (laser diode 2) mounted within the housing; whereby the aperture allows light from the light source to pass from the housing. Claxton discloses a laser positioning device being magnetically detachable by means of a magnetic material (63) being provided on one side in order to provide sufficient holding power to strongly attract and hold the device in place (See Column 4, lines 10 – 16). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the light emitting modules disclosed by Dong and Seki by adding magnetic means to the each of at least two of the sides of the housing as taught by Claxton in order to provide sufficient holding power to strongly attract and hold the device in place when stacked during the leveling process and prevent undesired movement that may affect the accuracy of the leveling.

In regards to claim 11, Dong and Seki teach a module comprising a housing having a plurality of sides (Figure 3 shows 3 modules stacked up, each module having a top, a bottom, and peripherals sides, all of these sides defining the plurality of sides), an aperture defined in a first side of the sides (defined by the wall allowing the laser beam to be emitted), and a light source (2) mounted within the housing, whereby the aperture allows light from the light source to pass from the housing. Claxton discloses a laser positioning device being magnetically detachable by means of a magnetic material (63) being provided on one side in order to provide

sufficient holding power to strongly attract and hold the device in place (See Column 4, lines 10 – 16). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the light emitting modules disclosed by Dong and Seki by adding magnetic means to the each of at least two of the sides of the housing as taught by Claxton in order to provide sufficient holding power to strongly attract and hold the device in place when stacked during the leveling process and prevent undesired movement that may affect the accuracy of the leveling.

Regarding claim 50, Dong and Seki disclose a housing having a plurality of sides (Figure 3 shows 3 modules stacked up, each module having a top, a bottom, and peripherals sides, all of these sides defining the plurality of sides), an aperture defined in a first of the sides (defined by the wall allowing the laser beam to be emitted), and a light source (2) mounted within the housing, whereby the aperture allows light from the light source to pass from the housing. Claxton discloses a laser positioning device being magnetically detachable by means of a magnetic material (63) being provided on one side in order to provide sufficient holding power to strongly attract and hold the device in place (See Column 4, lines 10 – 16). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the light emitting modules disclosed by Dong and Seki by adding magnetic means on at least a second of the sides as taught by Claxton in order to provide sufficient holding power to strongly attract and hold the device in place when stacked during the leveling process and prevent undesired movement that may affect the accuracy of the leveling.

In regards to claim 53, Dong, Seki and Claxton teach a device wherein one of the at least two sides is perpendicular to a different of the at least two sides.

With respect to the intended uses as stated in claims 1, 10, 11 and 50 : It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997).

Allowable Subject Matter

3. Claims 4, 5, 6 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Claims 9, 15 – 17, 27 – 29, 32 – 38, 40 – 47 and 52 are allowed.

Response to Arguments

5. Applicant's arguments filed November 15, 2005, with respect to claims 1 – 4, 10, 11 and 50 have been considered but are not persuasive.

Applicant arguments regarding the detachable coupling not shown by Seki is not persuasive. Seki clearly shows a positional adjusting unit (4), which as best understood by the Examiner, serves as a leveling platform for leveling adjustment of the device (See Column 5, lines 5 – 11). It is further noted, that the combination of Dong, Seki and Claxton provides the teaching of adding magnetic material to the sides of the light emitting modules, therefore, providing the “detachable” characteristic to the modules from said platform (4).

Applicant arguments regarding Claxton teaching magnets for coupling to a structure and not to a leveling platform are not persuasive. The claim language in claim 1 requires a “magnetically detachable modules” and Claxton teaches the use of magnetic means for detachably mounting a laser, in other words, Claxton teaches a “magnetically detachable laser module”. Therefore, it would have been obvious to an artisan skilled in the art, to utilize the teachings of Claxton to modify the laser modules shown by Dong, since it is well known in the art to provide fastening means, i.e., magnetic means, when a device is desired to be removably or detachably mounted to any surface, i.e., leveling platform, and since the use of magnetic means is one of multiple fasteners that could be alternatively provided to a device when desired to be removably or detachably mounted to any surface, i.e., leveling platform.

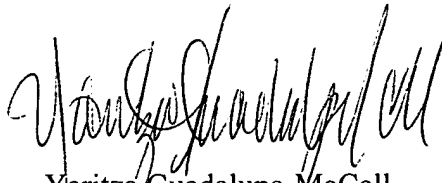
Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (571)272 -2244. The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YGM
January 23, 2006


Yaritza Guadalupe-McCall
Patent Examiner
Art Unit 2859